



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: SSO - 177257

PRELIMINARY RECITALS

Pursuant to a petition filed on October 6, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability regarding State Supplemental SSI benefits and Caretaker Supplement benefits, a hearing was held on November 10, 2016, by telephone.

The issue for determination is whether the agency properly seeks to recover an overpayment of State SSI and Caretaker Supplement (CTS) benefits in the amount of \$760.86 for the period of May, 2016 – June, 2016.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]

Division of Health Care Access and Accountability
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.

2. On April 29, 2016 and June 1, 2016, the Petitioner received State SSI and CTS payments of \$380.43/month for May and June, 2016.
3. On September 22, 2016, the agency issued a Notice of State SSI and/or Caretaker Supplement Overpayment to the Petitioner advising her that the agency intends to recover an overpayment of \$760.86 for the period of May and June, 2016 due to countable income exceeding program requirements.
4. On October 6, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Effective January 1, 1996, the State of Wisconsin began sending out its state supplemental SSI and CTS payments separately from federal SSI payments (they had previously been sent out as one check by the SSA), as mandated by Wis. Stat., §49.77. As part of the change, the state began to perform administrative functions involving the state payments that were done by the SSA for the federal SSI. One such function is the recovery of state SSI and CTS overpayments. When the state seeks to recover an overpayment, it must inform the recipient or former recipient of the action, and give that person the right to appeal the decision.

Wis. Admin. Code, §DHS 2.04(3) allows for the department to recoup, at the rate of 10% of the benefit paid, overpayments of incorrectly paid benefits including state SSI and CTS, regardless of fault. "Incorrectly paid benefits" means payments in an amount in excess of what the person was eligible to receive during the period in which the payments were made. Admin. Code, §DHS 2.03(5).

Petitioner was and is eligible for state SSI and CTS because she is a federal SSI recipient. See Wis. Stat., §49.77(2)(a)2. Petitioner testified at the hearing that in May and June, 2016, she obtained a part-time job and she believes this is why the federal SSA found she was not eligible for SSI benefits.

Based on the evidence, I must conclude that the agency properly seeks to recover \$760.86 for the period of May and June, 2016. The federal SSA determined she was over the income limit for the benefits. Because she did not receive federal benefits, she was not eligible for state benefits. Petitioner stated she had not filed an appeal with the federal SSA. If Petitioner does file an appeal with the federal SSA and that agency reverses its finding regarding her eligibility for May and June, 2016, she would also be eligible to receive a reimbursement of \$760.86 from the state if it has already been recovered.

CONCLUSIONS OF LAW

The agency correctly seeks to recover an overissuance of \$760.86 in State SSI and CTS benefits from the Petitioner for the period of May and June, 2016.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of January, 2017

\s _____
Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 24, 2017.

Division of Health Care Access and Accountability
State SSI